

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MBIA INSURANCE :
CORPORATION AND WELLS :
FARGO BANK, N.A. (f/k/a :
WELLS FARGO BANK :
MINNESOTA N.A.) AS :
TRUSTEE OF SFC GRANTOR :
TRUST, SERIES 2000-1, SFC :
GRANTOR TRUST, SERIES :
2000-2, SFC GRANTOR :
TRUST, SERIES 2000-3, SFC :
GRANTOR TRUST, SERIES :
2000-4, SFC GRANTOR :
TRUST, SERIES 2001-1, SFC :
GRANTOR TRUST, SERIES :
2001-2, SFC OWNER TRUST :
2001-I, AND SFC GRANTOR :
TRUST, SERIES 2001-3, :

Plaintiffs/Counterclaim:
Defendants, :

vs. :

ROYAL INDEMNITY COMPANY, :
Defendant/Counterclaim :C.A. NO.
Plaintiff. :02-1294-JJF

ROYAL INDEMNITY COMPANY, :
Third-Party Plaintiff, :

vs. :

ANDREW N. YAO, STUDENT :
LOAN SERVICING LLC, :
STUDENT LOAN ACCEPTANCE II :
LLC, STUDENT LOAN :
ACCEPTANCE III LLC, :
STUDENT LOAN ACCEPTANCE :
III LLC, STUDENT :
LOAN ACCEPTANCE V LLC, :
STUDENT LOAN ACCEPTANCE :
VIII LLC, STUDENT LOAN :
ACCEPTANCE IX LLC, SFC :
FINANCIAL LLC I, SFC :
FINANCIAL LLC II, SFC :
FINANCIAL LLC VI, SFC :
FINANCIAL LLC VII, :

:WITNESS:

:DIANE MESSICK

:VOLUME I, TRACK I

:DATE:

Third-Party Defendants.:JANUARY 17th, 2007

1 VIDEO OPERATOR: We're on the 08:37:15
2 record. This is a videotape deposition for
3 the United States District Court for the
4 District of Delaware. My name is Robert
5 Higham. I'm the videotape operator. I'm 09:34:32
6 employed by Veritext New York. The court
7 reporter is David Walsh. The caption for
8 today's case is as follows: It's a multi
9 caption case. The first caption being MBIA
10 Insurance Corporation, et al versus Royal 09:34:43
11 Indemnity Insurance Company. The case number
12 is 021294 (JJF). All other captions will be
13 reflected on the stenographic record.

14 This video deposition is
15 taking place at the Law Offices at 1201 North 09:34:58
16 Market Street, Wilmington, Delaware. All
17 counsel will be reflected on the stenographic
18 record. The deponent for today is Diane
19 Messick. Today's date is January 17th, 2007.
20 The camera time is 9:35. 09:35:12

21 The reporter will now swear
22 in the witness.

23 - - -

24 DIANE MESSICK, having been
25 duly sworn, was examined and testified as 09:35:17

1 follows: 09:35:17

2 - - -

3 EXAMINATION

4 - - -

5 BY MS. AINSLIE: 09:35:25

6 Q. Good morning, Ms. Messick. I'm
7 Elizabeth Ainslie. As I think you know, I
8 represent Pepper Hamilton and Rod Gagne in his
9 capacity as a lawyer at Pepper Hamilton and we
10 have some questions for you. I am well aware 09:35:36
11 that you've been deposed, especially about
12 SFC, perhaps about other things as well, on a
13 number of different occasions.

14 You know the general rules. We're not
15 supposed to talk at the same time. If there's 09:35:50
16 any question that you don't understand, and I
17 do sometimes ask confusing questions, let me
18 know and I'll try to do better.

19 What we're looking for is an accurate
20 depiction of what you remember about the time 09:36:04
21 that you spent at SFC.

22 Is that all acceptable to you?

23 A. Yes.

24 Q. Okay. And, again, I start with an
25 apology. I know you have been deposed a 09:36:16

1 MR. MEROUSE: Objection. 09:56:41

2 BY MS. AINSLIE:

3 Q. Did Mr. Gagne come to SFC's offices
4 frequently?

5 A. No. 09:56:49

6 Q. How often in the course of a year would
7 you say that Mr. Gagne came to SFC's offices?

8 A. I actually only remember one time in the
9 three times I was there that he came to SFC.

10 Q. In the three years? 09:57:05

11 A. Sorry, yes. That's all that I
12 specifically remember, yes.

13 Q. Okay. There may have been a few more,
14 but one is the only one that sticks in your
15 mind? 09:57:14

16 A. That's correct.

17 Q. Okay. And was he -- I take it he was
18 not part of any board of directors, any
19 finance committee, anything like that?

20 MR. MEROUSE: Objection. 09:57:23

21 THE WITNESS: Oh, no.

22 BY MS. AINSLIE:

23 Q. Okay. I will rephrase the question.

24 Did Mr. Gagne have any affiliation with any of
25 the business operations by way of committees 09:57:32

1 or otherwise of SFC? 09:57:35

2 A. No.

3 Q. Okay. Did you, as the finance director,
4 and I'm jumping ahead, subsequently the
5 controller of SFC, ever disperse any funds at 09:57:49
6 Mr. Gagne's direction?

7 A. No.

8 Q. Whose direction would it have required
9 before you would disperse funds?

10 A. Well, either Andrew Yao's or if it was a 09:57:59
11 bill to pay, to pay a bill, but I mean even
12 Pepper Hamilton bills at Andrew Yao's
13 direction were not to be paid until at least
14 60 days after receipt.

15 Q. And so Andrew would have been calling 09:58:13
16 the shots on most of these?

17 MR. MEROUSE: Objection.

18 THE WITNESS: Yes. On big
19 disbursements, unusual disbursements, other
20 than the regular operations of paying people 09:58:24
21 and, you know, payroll of SFC.

22 BY MS. AINSLIE:

23 Q. Did Andrew Yao ever explain to you why
24 he had a practice of using different attorneys
25 for different purposes? 09:58:34

1 MR. MEROUSE: Objection. 09:58:36

2 MR. WATERS: Objection.

3 MS. AINSLIE: Maybe I'll try

4 that again. What's the basis for the

5 objection? 09:58:43

6 MR. MEROUSE: You're

7 recategorizing what she said. I don't think

8 anybody has said he had a practice of using

9 different attorneys on different occasions as

10 a general matter. 09:58:50

11 BY MS. AINSLIE:

12 Q. All right. Did he have a practice of

13 using different attorneys on different

14 occasions?

15 A. At one time Andrew did explain to me 09:58:56

16 that he thought it was better to have more

17 than one attorney on retainer to do different

18 things. It's just better to spread your

19 business around a little bit.

20 Q. Okay. Now, at the outset, you said you 09:59:06

21 came in as finance director and you explained

22 your role in generating the servicer reports?

23 A. Finance manager was the title.

24 Q. Sorry.

25 A. That's all right. 09:59:31

1 Q. And at some point were you promoted? 09:59:32

2 A. Yes.

3 Q. When was that?

4 A. I believe it was the beginning of 2000 I
5 was promoted to controller. 09:59:41

6 Q. And at that time, was there any finance
7 person at SFC who was above you in rank?

8 A. No.

9 Q. So, you were in charge of the finances
10 more or less? 10:00:02

11 A. Yes. At that point, I was in charge of
12 the Accounting Department as well. Before I
13 hadn't been.

14 Q. Okay. Now, tell us about that time, if
15 you can think back to the beginning of 2000, 10:00:04
16 what were the different departments at SFC
17 besides accounting, which you were at that
18 point heading?

19 A. There was accounting, finance --

20 Q. Can I interrupt you, is that okay? 10:00:19

21 A. Pardon.

22 Q. Is it okay if I interrupt you?

23 A. Yes.

24 Q. What is finance?

25 A. Finance again is the servicer reports. 10:00:25

1 other attorneys were coming back saying 10:22:12

2 changes they wanted to make in documents. Rod

3 would contact me to see how we felt about

4 those changes or if there were changes that we

5 wanted to make in the documents. 10:22:21

6 Q. Do you know why he was contacting you as

7 opposed to Andrew Yao or Gary Hawthorne or

8 Perry Turnbull?

9 A. I was responsible for the Capital

10 Markets Group. 10:22:30

11 Q. Okay.

12 A. I mean that was one of the first things

13 I did when I was hired by Student Finance

14 Corporation was take home the Wilmington Trust

15 warehouse line documentation and read it and 10:22:39

16 read it and read it and that was the first

17 time I ever met Rod and that's the only time I

18 remember him being at the offices because

19 there were some things I was not clear on.

20 The legalese, if you will. 10:22:52

21 Q. Did you also communicate with him by

22 e-mail?

23 A. Yes.

24 Q. Okay. Did you -- were you including

25 e-mail communications in your answer to the 10:23:00

1 the form.

16:12:17

2 MR. EPSTEIN: Objection.

3 THE WITNESS: I would think

4 so, yes.

5 BY MS. GOODMAN:

16:12:21

6 Q. Did he discuss with you the business
7 operations?

8 MR. SHAPIRO: Objection to
9 the form.

10 THE WITNESS: Not that I 16:12:32

11 really remember because actually there was a
12 time where Andrew Yao told me specifically
13 not to discuss business operations with Rod
14 Gagne because he was our attorney to give us
15 legal advice. He wasn't an operations person 16:12:44
16 to give us operations advice or to be
17 involved in operations. I can't remember
18 what the time frame was on that or quite
19 frankly what precipitated that.

20 BY MS. GOODMAN: 16:12:57

21 Q. So, if Mr. Gagne had a question, Mr. Yao
22 told you not to answer that question?

23 A. He said if it was operations based. He
24 said there's no need to discuss the operations
25 with -- I don't even remember if he said Rod 16:13:11

1 Gagne or Pepper Hamilton. It was they're 16:13:13
2 there for legal advice.

3 Q. Did there ever come a time when
4 Mr. Gagne asked you a question and you told
5 him you could not answer it? 16:13:21

6 A. I don't remember.

7 Q. Did Mr. Gagne ever ask you for
8 information and you told him he couldn't have
9 it?

10 A. The only specific time I remember that 16:13:35
11 was Andrew Yao -- I would send out the
12 financial statements of the company based on
13 contractually who was supposed to get them and
14 Andrew Yao told me that Rod Gagne was not to
15 get them and that if Rod Gagne wanted them and 16:13:49
16 this was I think because of the loans with the
17 trust, the Gagne trusts, if Rod wanted the
18 financial statements, he would have to ask
19 Andrew personally and Andrew would then tell
20 me I could send the financial statements to 16:14:05
21 him. I don't remember specifically anything
22 else.

23 Q. Well, did Mr. Gagne ever ask you for the
24 financial statements and you told him he had
25 to ask Mr. Yao? 16:14:15

1 A. Yes, I do remember that. 16:14:17

2 Q. When was that?

3 A. I don't remember the time frame. It
4 would have either been after the '99
5 financials or the 2000 financials. So, it was 16:14:23
6 in August of 2000 or April of 2001. I just
7 don't remember specifically when it was.

8 Q. Did he tell you why he wanted to see the
9 financials?

10 A. Because it was part of the loan 16:14:40
11 contracts that they get the financial
12 statements. The loans that the Gagne trusts
13 and Bob Bast had.

14 Q. Do you know if Mr. Gagne ever received
15 the financial statements? 16:14:53

16 A. I don't remember.

17 Q. Okay.

18 A. I don't remember directly sending them
19 to him.

20 Q. Do you recall when that conversation was 16:15:11
21 with Mr. Yao?

22 MR. EPSTEIN: Objection.

23 THE WITNESS: No.

24 BY MS. GOODMAN:

25 Q. Was it early in your tenure at SFC? 16:15:20

1 A. I really don't remember at all. I'm 16:15:24
2 trying to picture what office I was sitting in
3 because we moved often enough, that would give
4 me some indication of the time frame and I
5 just don't remember where I was. 16:15:35

6 Q. Was it a face-to-face conversation?

7 A. No, it was a telephonic.

8 Q. Do you remember how it came up?

9 A. No, I do not remember what precipitated
10 it. 16:15:50

11 Q. Was there anyone else that Mr. Yao told
12 you not to give information to or was this
13 strictly a conversation about Mr. Gagne?

14 MR. SHAPIRO: Objection to
15 the form. 16:16:01

16 THE WITNESS: Well, the
17 conversation could have had other -- we could
18 have discussed other things. I don't
19 remember. I just remember that because, no,
20 I -- simply because for that reason it kind 16:16:12
21 of did stand out because contractually it was
22 a party that was supposed to get the
23 financial statements and I was being told not
24 to send them.

25 BY MS. GOODMAN: 16:16:22

1 Q. Did you ask Mr. Yao why he didn't want 16:16:23
2 you to send them?

3 A. No, I didn't ask Andrew Yao why when he
4 gave directives.

5 Q. But did you think it was odd because it 16:16:31
6 was in the contract?

7 MR. SHAPIRO: Objection to
8 the form.

9 THE WITNESS: I just thought
10 that, you know, Andrew wanted to know when 16:16:37
11 Rod asks. I didn't think why. I just said,
12 okay, all right. When Rod asked where are
13 the financial statements, I told him Andrew
14 said you have to ask him directly.

15 Again, I don't remember if 16:16:53
16 that was the only part of the conversation,
17 but I do remember having that conversation
18 with both Andrew Yao and with Rod. It was
19 uncomfortable for me.

20 BY MS. GOODMAN: 16:17:08

21 Q. Who at SFC -- was there someone at SFC
22 who was responsible for reviewing Pepper
23 Hamilton's invoices?

24 A. I'm sure I looked at them.

25 Q. Were you responsible for approving them 16:17:50

1 The last document you were shown 16:38:37
2 regarding a call at home from Mr. Gagne refers
3 to SWH.

4 What was SWH?

5 A. They were a temporary lender of funds to 16:38:51
6 Student Finance Corporation.

7 Q. Short term loan, loans?

8 A. Yes, short term loans.

9 Q. Was this the first time in 2001 that you
10 had heard of SWH? 16:39:04

11 A. I don't remember when I first heard of
12 them. I mean there was more than one loan
13 that SWH made to Student Finance Corporation.
14 I don't think October 5th, 2001 was the first
15 one. 16:39:19

16 Q. Do you recall what the largest of those
17 loans was?

18 A. I don't.

19 Q. Does 40 million ring a bell at all?

20 A. It rings a bell. I don't specifically 16:39:32
21 remember the dollar amount.

22 Q. Did you have any role in negotiating the
23 terms of the loan with SWH?

24 A. I believe I did.

25 Q. Did you negotiate with their lawyers? 16:39:42

1 A. I don't remember who I negotiated with. 16:39:47

2 Q. Who finally approved the terms of the
3 loans with SWH?

4 A. Well, Andrew Yao would have the final
5 approval on it. To be quite honest, there 16:39:58
6 wasn't a lot of negotiations with SWH. They
7 were let's refer to as hard money lenders.

8 Q. What do you mean by hard money lenders?

9 A. They charged high fees. They charged
10 high interest rate. 16:40:11

11 Q. As a matter of fact, if you take a look
12 at Exhibit 1457, you may have to help me
13 actually, but one of the law firms listed is
14 Solomon and Weinberg.

15 Do you know that law firm? 16:40:32

16 A. Yes, Solomon and Weinberg are the S-W in
17 SWH.

18 Q. I could not tell whether the \$191,251
19 that's listed on that page refers to Solomon
20 and Weinberg or Sherman and Howard, the name 16:40:51
21 above them.

22 Can you help me with that?

23 MS. GOODMAN: Object to the
24 form.

25 THE WITNESS: Yeah, that 16:41:00

1 would refer to the Solomon and Weinberg. 16:41:00

2 BY MR. EPSTEIN:

3 Q. So, this is a law firm that represented
4 SWH in its negotiations with Student Finance
5 for a loan and that law firm was paid 191,000; 16:41:11
6 is that correct?

7 MS. GOODMAN: Objection.

8 MR. MEROUSE: Objection to
9 the form.

10 THE WITNESS: It could have 16:41:19
11 been more than one loan, but it could have
12 been two.

13 BY MR. EPSTEIN:

14 Q. But in any event, some 190,000 was paid
15 to them for the work that they did 16:41:27
16 representing their client SWH, correct?

17 MS. GOODMAN: Objection to
18 the form.

19 MR. MEROUSE: Objection to
20 the form. 16:41:35

21 THE WITNESS: Correct.

22 BY MR. EPSTEIN:

23 Q. Staying on that document for a minute.
24 This is a healthy list of law firms on here.
25 Blank, Rome, do you know anything about that 16:41:46

1 MR. MEROUSE: Objection to 16:43:44
2 the form.

3 THE WITNESS: Yes. At that
4 time, yes.

5 BY MR. EPSTEIN: 16:43:46

6 Q. At that time. Thank you for correcting
7 me. Going back to SWH now, Student Finance
8 did indeed enter into loan agreements with
9 SWH, did they not?

10 A. Yes. If I remember correctly, there 16:44:04
11 were three during my tenure there.

12 Q. And, again, that would have been after
13 Mr. Yao approved the terms, correct?

14 A. Yes.

15 Q. Do you know whether Mr. Yao himself 16:44:16
16 engaged in any negotiations with SWH?

17 A. I don't know.

18 Q. With respect to other lenders to Student
19 Finance, short term lenders, does the name

20 Ticor mean anything to you? 16:44:35

21 A. No.

22 Q. T-I-C-O-R?

23 A. No.

24 Q. Other than the clients that I represent,
25 which are Mr. Bast, Pamela Gagne, Rod as Rod 16:44:46

1 Gagne as trustee and Mr. Bast as trustee and 16:44:50
2 the trusts, were there any other individuals
3 or entities other than SWH that provided short
4 term loans?

5 A. There might have -- well, Best Bank was 16:45:03
6 involved with Student Finance. I don't
7 remember the relationship there, but they
8 provided funds. Whether they bought loans or
9 it was a loan, I don't remember. I think
10 there might have been a couple of other 16:45:20
11 individuals. I just don't remember the names.

12 Q. Does the name Jacoby ring a bell?

13 A. Yes.

14 Q. Was Jacoby a lender?

15 A. I believe so. 16:45:31

16 Q. A short term lender?

17 A. I believe so. And I also think there
18 was also a Mr. Packer.

19 Q. Mr. Packer?

20 A. Yes. 16:45:36

21 Q. Mr. Welsh, does that ring a bell?

22 A. That one doesn't ring a bell?

23 Q. Okay. With respect to all of those
24 loans, and I'm excluding what I will call the
25 Family Loans, the Gagne or Bast family loans 16:45:47

1 for a moment. 16:45:50

2 With respect to all of the other short
3 term loans, were you the one at Student
4 Finance that negotiated the terms of those
5 loans? 16:45:59

6 A. No, I don't remember being the one who
7 negotiated the terms of those loans.

8 Q. Do you know who did?

9 A. No.

10 Q. Did you ever see any documents or hear 16:46:09
11 any conversations in which it was stated that
12 Mr. Yao was the one that negotiated the terms?

13 A. My assumption always was that it was
14 Andrew Yao. Again, I think those loans were
15 all prior to my either employment or becoming 16:46:26
16 a part of the Accounting Department.

17 Q. And we're talking about loans which are
18 not part of what I will call the family loans?

19 A. Correct.

20 Q. Now, with respect to the family loans, 16:46:39
21 there were loans made during the time that you
22 were at Student Finance, correct?

23 A. Yes.

24 Q. Did you negotiate the terms of the
25 loans? 16:46:52

1 A. I don't remember doing that. 16:46:52

2 Q. Do you know who did on behalf of Student
3 Finance, if anyone?

4 A. If I didn't, it would have been Andrew
5 Yao. 16:47:02

6 Q. Did you ever see any documents such as
7 term sheets regarding such loans that Mr. Yao
8 would send to people, including the family or
9 the people who I represent?

10 A. I don't remember. 16:47:17

11 Q. Did Mr. Yao ask your input with respect
12 to the terms of the loans that were eventually
13 made by my clients to Student Finance?

14 A. I don't remember.

15 Q. Do you know whether the loans that were 16:47:32
16 made by my clients to Student Finance required
17 that Student Finance purchase insurance to
18 guarantee payment of those loans?

19 A. I don't believe that they did.

20 Q. With respect to the SWH loans that you 16:47:48
21 mentioned before, did those loans require the
22 purchase of insurance to insure those loans?

23 A. Yes.

24 Q. Do you know what company provided the
25 insurance for those loans? 16:48:03

1 A. Royal. 16:48:05

2 MR. MEROUSE: Objection to
3 the form.

4 BY MR. EPSTEIN:

5 Q. Royal. So, Royal indeed then knew about 16:48:07
6 the SWH loans, correct?

7 MR. MEROUSE: Objection to
8 the form.

9 MS. GOODMAN: Objection to
10 the form. 16:48:15

11 THE WITNESS: Yes.

12 BY MR. EPSTEIN:

13 Q. And would you expect from your
14 involvement with respect to Student Finance
15 and the SWH loans, that Royal knew the terms 16:48:25
16 of the SWH loans?

17 MR. MEROUSE: Objection to
18 the form.

19 MS. GOODMAN: Objection.

20 THE WITNESS: I don't 16:48:36
21 remember.

22 BY MR. EPSTEIN:

23 Q. Okay. Did you ever review any of the
24 loan documents between SFC and my clients?

25 A. Not that I remember. 16:48:50

1 Q. And that would include the loans from 16:48:52
2 the beginning of your tenure with SFC until
3 you left, would that be correct?

4 A. Yes.

5 Q. And, in fact, are you aware of any loans 16:49:04
6 that were made by my client, Student Finance,
7 in March of 2002?

8 A. Yeah, I believe it was a
9 February/March 2002 time frame there were
10 loans made. 16:49:19

11 Q. And how long was it after those loans
12 were made that you left Student Finance?

13 A. I left the beginning of May. Gave
14 notice sometime in April.

15 Q. Okay. Do you have any idea in your -- 16:49:37
16 as you sit here today as to the number of
17 loans that were made by my clients to Student
18 Finance from the time that you first came on
19 board at Student Finance?

20 A. I don't remember. 16:49:52

21 Q. Was it a substantial number of loans?

22 MS. GOODMAN: Objection.

23 THE WITNESS: Yeah, there
24 were loans made. They were repaid. There
25 were loans made, they were repaid. 16:50:01

1 BY MR. EPSTEIN: 16:50:04

2 Q. Indeed, isn't it true that with respect
3 to every loan that was paid -- I'm sorry, that
4 was made by my clients to Student Finance,
5 with the exception of the March 2002 loans, 16:50:22
6 that every single one of those loans was paid
7 either according to its terms or according to
8 amended terms with respect to those loans?

9 MS. GOODMAN: Objection to
10 the form. 16:50:29

11 MR. MEROUSE: Objection to
12 the form.

13 THE WITNESS: That's what I
14 remember, yes.

15 BY MR. EPSTEIN: 16:50:33

16 Q. And that every payment was made
17 consistent with the terms of either the
18 original loans or the amended -- the amended
19 documents for those loans?

20 MS. GOODMAN: Objection. 16:50:42

21 MR. MEROUSE: Objection to
22 the form.

23 THE WITNESS: You're talking
24 every repayment to pay back the loans, yes,
25 that's what I recall. 16:50:46

1 BY MR. EPSTEIN: 16:50:48

2 Q. Would your answer be the same with
3 respect to interest payments that they were
4 made with respect to each of the loans in
5 accord with the terms of the loans? 16:50:56

6 MS. GOODMAN: Objection to
7 the form.

8 MR. MEROUSE: Objection to
9 the form.

10 THE WITNESS: That's what I 16:51:01
11 recall, yes.

12 BY MR. EPSTEIN:

13 Q. And do you recall what those terms were,
14 the payment of interest, with respect to those
15 loans? 16:51:06

16 A. No, I don't.

17 Q. Would it refresh your recollection if
18 you looked at the general ledger of Student
19 Finance to see whether those loans were paid
20 on a monthly base? 16:51:15

21 MS. GOODMAN: Objection.

22 THE WITNESS: It still
23 wouldn't help me with the interest rate, was
24 that your question?

25 BY MR. EPSTEIN: 16:51:22

1 Q. Well, it was. 16:51:24

2 A. Unless I had a calculator or an
3 amortization schedule.

4 Q. Well, let me ask you this, would the
5 general ledger for Student Finance for a 16:51:35
6 particular year show what payments were made
7 with respect to a particular loan each and
8 every month during that year?

9 MR. MEROUSE: Objection to
10 the form. 16:51:45

11 THE WITNESS: Yes.

12 BY MR. EPSTEIN:

13 Q. And would it be your conclusion that if
14 with respect to each of those loans for every
15 month that the loan was outstanding, the same 16:51:53
16 amount was paid month after month until the
17 loan was repaid, that the interest was paid in
18 accord with the terms of the loan documents?

19 MS. GOODMAN: Objection to
20 the form. 16:52:08

21 MR. MEROUSE: Objection to
22 the form.

23 THE WITNESS: Yes. No, I
24 agree with that, I just don't remember what
25 the interest rate was. 16:52:11

1 BY MR. EPSTEIN: 16:52:12

2 Q. Do you recall there ever being a time
3 when interest was not paid when due on any
4 loans to my clients?

5 MR. MEROUSE: Objection to 16:52:20
6 the form.

7 THE WITNESS: Not that I
8 remember.

9 BY MR. EPSTEIN:

10 Q. Do you recall any instance when any 16:52:24
11 principal was not paid when due to any of my
12 clients?

13 MR. MEROUSE: Same objection.

14 THE WITNESS: Not that I
15 remember. 16:52:37

16 BY MR. EPSTEIN:

17 Q. Did you ever review the terms of the
18 loans to my clients?

19 MS. GOODMAN: Objection to
20 the form. 16:52:43

21 THE WITNESS: Review -- I'm
22 sure I must have seen the terms of the loans
23 in order to come up with a payment schedule.

24 BY MR. EPSTEIN:

25 Q. Were each of the loans that were made by 16:52:58

1 my clients to Student Finance, were they 16:53:01
2 reported on the books and records of Student
3 Finance?

4 A. Yes.

5 Q. And would the initial -- you know, back 16:53:09
6 when I was learning accounting as an
7 undergraduate, there actually used to be a
8 book called the general ledger which you would
9 go to and look at. I assume that at Student
10 Finance that is not true or is not true? 16:53:30

11 A. It's automated.

12 Q. It's automated. So, that the general
13 ledger that we refer to is really a printout,
14 is it not, of information that you put in a
15 computer? 16:53:43

16 A. Correct.

17 Q. With respect to each of the loans that
18 my clients made, were entries made on the
19 general ledger or into the computer with
20 respect to each of those loans setting up an 16:53:54
21 account, giving it a name, giving it a proper
22 name, and then carrying forward either a debit
23 or a credit with respect to each of those
24 accounts?

25 MS. GOODMAN: Objection to 16:54:06

1 the form. 16:54:06

2 MR. MEROUSE: Objection to
3 the form.

4 THE WITNESS: Yes.

5 BY MR. EPSTEIN: 16:54:08

6 Q. So, these were treated at least from an
7 accounting standpoint as what I would call an
8 ordinary lending relationship between Student
9 Finance and my clients, correct?

10 MR. MEROUSE: Objection to 16:54:23
11 the form.

12 MS. GOODMAN: Objection.

13 THE WITNESS: Yes.

14 BY MR. EPSTEIN:

15 Q. And it would be no different with 16:54:25
16 respect to loans made by banks; is that
17 correct?

18 MS. GOODMAN: Objection.

19 MR. MEROUSE: Objection to
20 the form. 16:54:32

21 THE WITNESS: Yes.

22 BY MR. EPSTEIN:

23 Q. In terms of setting up an account and
24 making appropriate debits and credits when
25 payments are made or extensions of credit are 16:54:38

1 granted or additions to credit, whatever; is 16:54:41
2 that correct.

3 MS. GOODMAN: Objection.

4 THE WITNESS: Correct.

5 BY MR. EPSTEIN: 16:54:46

6 Q. Treated no differently?

7 A. Correct.

8 Q. Than any other loan?

9 MR. MEROUSE: Objection to
10 the form. 16:54:50

11 BY MR. EPSTEIN:

12 Q. Your answer is yes?

13 A. Correct. I didn't know there was a
14 question, I'm sorry.

15 Q. I probably didn't ask it, that's 16:54:56
16 probably why you didn't think there was one.

17 Did you ever sit down and compare the
18 terms of the loans that my clients made to
19 Student Finance with the loans that any other
20 entity made to Student Finance, and I'm 16:55:16
21 talking short term loans. I'm talking bridge
22 loans.

23 Did you ever do that?

24 MS. GOODMAN: Objection.

25 THE WITNESS: Not that I 16:55:25

1 remember. 16:55:25

2 BY MR. EPSTEIN:

3 Q. Is there anything in your recollection
4 that the terms that my clients charged were
5 any greater than the terms of any other loans 16:55:32
6 that were obtained by Student Finance on a
7 short term basis?

8 MS. GOODMAN: Objection.

9 MR. MEROUSE: Objection to
10 the form. 16:55:41

11 THE WITNESS: Not that I
12 remember.

13 BY MR. EPSTEIN:

14 Q. Indeed, did you ever come to a
15 conclusion that the loans that Student Finance 16:55:45
16 obtained from SWH were quite a bit more
17 expensive than the loans that my clients made
18 to Student Finance?

19 MR. MEROUSE: Objection to
20 the form. 16:55:57

21 MS. GOODMAN: Objection.

22 THE WITNESS: My recollection
23 is the loans made by SWH were the most
24 expensive loans that Student Finance got from
25 any sources. 16:56:05

1 BY MR. EPSTEIN: 16:56:17

2 Q. Do you know whether the loans my clients
3 made to Student Finance were secured with any
4 collateral?

5 A. I don't remember. 16:56:44

6 Q. Do you know whether they were guaranteed
7 by anybody?

8 A. I don't know.

9 Q. Were you the person that would
10 authorize -- we talked about the monthly 16:56:58
11 interest payments or interest payments.

12 Would you need authorization from
13 Mr. Yao to make those payments?

14 A. I don't remember that.

15 Q. So that your answer would be no? 16:57:12

16 A. To the best of my recollection, I don't
17 remember needing that.

18 Q. What about repayment of principal, would
19 you need his authorization to do that?

20 A. Not that I remember. 16:57:22

21 Q. I'm going to ask you generally, did you
22 ever meet Robert Bast?

23 A. No.

24 Q. Did you ever talk to him over the phone?

25 A. I think I did. 16:57:43

1 Q. Do you remember what you talked about? 16:57:44

2 A. No.

3 Q. Did Mr. Bast ever give you instructions
4 or directions as to how to perform your job?

5 A. No. 16:57:53

6 Q. Was he ever in attendance at any meeting
7 at Student Finance?

8 A. No, not that I'm aware of.

9 Q. Do you know whether he was a member of
10 the board or any committee at Student Finance? 16:58:03

11 A. I know he wasn't.

12 Q. Did you ever see him at Student Finance?

13 A. No.

14 Q. Was he the power behind the throne in
15 your opinion? 16:58:12

16 MR. MEROUSE: Objection to
17 the form.

18 MS. GOODMAN: Objection.

19 THE WITNESS: No.

20 BY MR. EPSTEIN: 16:58:16

21 Q. Who sat on the throne?

22 MS. GOODMAN: Objection.

23 THE WITNESS: Andrew Yao.

24 BY MR. EPSTEIN:

25 Q. To your knowledge, there was no one in 16:58:21

1 back of that throne, was there? 16:58:23

2 MR. MEROUSE: Objection to
3 the form.

4 MS. GOODMAN: Objection.

5 THE WITNESS: Not to my 16:58:27
6 knowledge.

7 BY MR. EPSTEIN:

8 Q. What about Pamela Gagne, if I asked you
9 the same series of questions involving
10 directions to you as to how to perform your 16:58:37
11 job, a member of the board, a member of any
12 committees, any participation whatsoever in
13 the operations of the business of Student
14 Finance, would your answer be no?

15 MS. GOODMAN: Objection. 16:58:53

16 MR. MEROUSE: Objection to
17 the form.

18 THE WITNESS: My answer would
19 be no.

20 BY MR. EPSTEIN: 16:58:56

21 Q. And that's for the entire period you
22 were at Student Finance, correct?

23 MS. GOODMAN: Objection.

24 THE WITNESS: Correct.

25 BY MR. EPSTEIN: 16:59:01

1 Q. Did you ever hear any rumors that she or 16:59:02
2 Bob Bast were involved in running or operating
3 Student Finance?

4 A. No.

5 Q. You were asked some questions regarding 16:59:16
6 the family of Student Finance, okay. I would
7 imagine the schools that you purchased loans
8 for were pretty important to Student Finance,
9 weren't they?

10 MS. GOODMAN: Objection. 16:59:33

11 THE WITNESS: Yes.

12 BY MR. EPSTEIN:

13 Q. Without those schools, what would happen
14 to Student Finance?

15 A. No business. 16:59:38

16 MR. MEROUSE: Objection to
17 the form.

18 BY MR. EPSTEIN:

19 Q. Do you consider those schools to be in
20 the family? 16:59:42

21 MR. MEROUSE: Objection to
22 the form.

23 MS. GOODMAN: Objection.

24 THE WITNESS: I had not heard
25 that term before, so I didn't consider 16:59:46

1 THE WITNESS: Yes. 17:07:49

2 MR. EPSTEIN: Okay. If you
3 just give me a minute. Why don't we go off
4 for a minute, so I can see if I really need
5 any of these. 17:07:59

6 VIDEO OPERATOR: Off the
7 record, the time is 17:07.

8 Back on the record, the time
9 is 17:17.

10 BY MR. EPSTEIN: 17:17:13

11 Q. I'm showing you an exhibit that was
12 previously marked as 229, Track II, which was
13 introduced as an exhibit at the Kartha
14 deposition and I'd like you to look through it
15 before, you know, I ask you any questions. 17:17:35

16 A. Okay.

17 Q. Okay. Now, most of the pages relate to
18 1999 from what I can see, but some of the
19 pages also relate to subsequent years.

20 Is this a compilation of accounts taken 17:18:13
21 from different or general ledgers from
22 different years to your knowledge?

23 MR. MEROUSE: Objection to
24 the form.

25 THE WITNESS: That's what it 17:18:27

1 appears to be. 17:18:28

2 BY MR. EPSTEIN:

3 Q. Okay. And, again, if you would grab any
4 one page and look at it, would that show
5 monthly payments of interest with respect to 17:18:35
6 loans that my clients made to Student Finance?

7 A. Yes, that's what it looks like it is.

8 MS. GOODMAN: Note my
9 objection to the question, I'm sorry.

10 BY MR. EPSTEIN: 17:18:52

11 Q. And without spending a lot of time going
12 page-by-page-by-page, I'd like you to thumb
13 through it and tell me whether you see a
14 regular systematic monthly payment of interest
15 with respect to the loans that were 17:19:06
16 outstanding made by my clients to Student
17 Finance?

18 MS. GOODMAN: Objection to
19 the form.

20 THE WITNESS: Yes. 17:19:15

21 BY MR. EPSTEIN:

22 Q. To your knowledge, during the entire
23 time you were at Student Finance, was there
24 ever a payment made to my clients that was not
25 in the ordinary course of business of Student 17:19:26

1 Finance and my clients?

17:19:29

2 MS. GOODMAN: Objection.

3 MR. MEROUSE: Objection to

4 the form.

5 THE WITNESS: Not that I

17:19:33

6 remember.

7 MR. EPSTEIN: Okay. I'm not

8 going to mark this. I'm done. Pass the

9 witness.

10 VIDEO OPERATOR: Off the

17:19:45

11 record, the time is 17:19. That completes

12 videotape number three.

13 Back on the video record.

14 This is the beginning of tape number four.

15 The camera time is 17:26.

17:26:13

16 BY MR. CASTAYBERT:

17 Q. Good afternoon, Ms. Messick.

18 My name is Andre Castaybert and I

19 represent -- I'm from Proskauer and I

20 represent Wells Fargo, the trustee, and we

17:26:27

21 have been representing MBIA in this matter as

22 well.

23 To finish up the day today and before we

24 go on tomorrow, I would like to ask you a

25 couple questions to get started.

17:26:40